J.B. JEYARETNAM

v.

THE ATTORNEY-GENERAL

HIGH COURT, SINGAPORE
CHAO HICK TIN JC
[ORIGINATING SUMMONS NO. 979 OF 1989]
9 JULY 1990

CONSTITUTIONAL LAW: *Member of Parliament - Whether announcement by Speaker was a nullity - Qualifications to stand for election - Constitution of Singapore, Articles 45, 46, 48.*

The plaintiff became a Member of Parliament on 31 October 1981. In the 1981 general election, he was re-elected MP for the same constituency. In December 1983, the plaintiff, together with one Wong, was jointly charged and tried for three offences under s. 421 of the Penal Code. The two were also each separately charged with a fourth offence under s. 199 of the Penal Code. The plaintiff was convicted of a charge under s. 421 but was acquitted on all other charges. They were each sentenced by the District Judge with a fine of S$1,000 and they appealed to the High Court against the conviction. The public prosecutor cross-appealed against the acquittals as well as the sentence imposed by the District Judge.

The Chief Justice, who heard the appeal, set aside the acquittal as regards the charge under s. 199 and ordered a retrial. He allowed the public prosecutor's appeal against the acquittals on the two charges under s. 421 and sentenced each of the accused to a fine of S$1,000 on each charge.

In June 1985, the plaintiff and Wong applied to the Chief Justice to refer certain questions of law to the Court of Criminal Appeal, but the application was refused. The appeal against this refusal was also dismissed, and the decision was later affirmed by the Privy Council.

Upon retrial of the s. 199 charge, the plaintiff and Wong were convicted and sentenced to a term of imprisonment of 3 months. On appeal to the High Court, the sentence was reduced to one month plus a fine of $5,000. Again the plaintiff and Wong applied to refer certain questions of law to the Court of Criminal Appeal but their applications were refused by the High Court. They sought to challenge this refusal by filing motions before the Court of Criminal Appeal but these were rejected for want of jurisdiction. Their subsequent petition to the Privy Council for special leave to appeal was also rejected for want of jurisdiction.

Following these events, measures were taken by the Attorney-General which in due course resulted in the plaintiff being struck off the roll as an advocate and solicitor. The plaintiff appealed to the Privy Council. This time the Privy Council held that the four convictions were wrong in law and allowed the appeal. The plaintiff was accordingly restored to the roll of advocates and solicitors of the Supreme Court of Singapore.

In the meantime, however, the Clerk of Parliament was informed by the Attorney-General on 13 November 1986 that the plaintiff was disqualified to be and ceased to be a Member of Parliament with effect from 10 November 1986. On 9 December 1986 the Speaker informed the House that relying on the advice of the Attorney General, the plaintiff had ceased to be a Member of Parliament with effect from 10 November 1986.

The plaintiff now applies for a declaration that he did not cease to be a Member of Parliament on 10 November 1986, that the announcement by the speaker was a nullity and that he is qualified to offer himself for election to Parliament in any election for any vacancy arising in Parliament.

Held:

[1] As from 10 November 1986 the plaintiff stood convicted of an offence and was sentenced to a term of imprisonment of one month and a fine of S$5,000; thus his case clearly came within Article 45(1)(e) of the Constitution and by virtue of Article 46(2)(e) his seat became vacant.

[2] Article 48 in no way modifies or restricts the scope of Articles 45(1) and 46(2); these constitution provisions should be given their plain meaning and applied in a sensible and practical manner; in the circumstances of this case, the plaintiff's seat had become vacant by operation of law.

[3] It would be wrong to grant the declaration sought by the plaintiff because in doing so it would be stretching the machinery of declaration too far; granting the declaration would be to do the very thing which cannot be done, which is to remove or set aside the conviction so that the plaintiff will no longer be disqualified to be a Member of Parliament.

[4] The views of the Privy Council regarding the convictions were not expressed in an appeal where the public prosecutor was a party; they were expressed in a disciplinary matter; at best, these views were *obiter dicta*; the correct procedure to be adopted to overcome the four convictions was by way of a petition for pardon to the President of the Republic of Singapore, and this procedure is implicit in Article 45(1)(e).

[5] A Civil Court cannot set aside a criminal conviction; it cannot usurp a jurisdiction which it did not possess.

[6] Whether a conviction is subsequently considered good or bad, it remains a conviction unless it is removed by a free pardon from the President; only such a pardon can remove the disqualification.

[7] Noting that the plaintiff's petition for pardon had been refused by the President of Singapore the plaintiff could not, by this originating summons, indirectly get the Court to override the President's refusal to exercise his prerogative of mercy; in any case, the Court has serious doubts that the exercise of the prerogative is a matter that can be questioned in Court.

[Plaintiff's application dismissed.]

Cases referred to:

Ratnam v. Law Society of Singapore [1976] 1 MLJ 195
J.B. Jeyaretnam v. Law Society of Singapore [1988] 3 MLJ 425
Fan Yew Teng v. Setia Usaha, Dewan Ra'ayat & Ors. [1975] 2 MLJ 40
Michael Ben Anak Panggi v. PP [1979] 2 MLJ 65
Munnich v. Godstone Rural District Council [1966] 1 All ER 930
Arnold & Ors. v. National Westminster Bank [1988] 3 All ER 877
Eshah Bte Sa'at & Ors. [1975] 2 MLJ 97
Imperial Tobacco Co. Ltd. & Anor. v. Attorney-General [1980] 1 All ER 866
Hanratty v. Lord Butler of Saffron Weldon [1971] 115 Sol Jo 386

Legislation referred to:
Constitution of Singapore [Sing], arts. 45, 46, 48
Criminal Procedure Code [Sing], s. 216
Federal Constitution, arts. 48, 50, 53
Penal Code, s. 379
Courts of Judicature Act 1964, s. 66(1)
Penal Code [Sing], ss. 199, 421
Constitution of the State of Sarawak, art. 19
Supreme Court of Judicature Act [Sing], s. 60(1)

For the plaintiff - Martin Thomas QC (with J B Jeyaratnam)
For the defendant - Tan Boon Teik (with Jeffrey Chan)

JUDGMENT

Chao Hick Tin JC:

This is an application by the plaintiff seeking a declaratory judgment for the following orders:

(i) that the plaintiff did not cease to be an elected member of the sixth Parliament on 10 November 1986;

(ii) that the plaintiff was at all material times the elected member of the sixth Parliament for the electoral district of Anson and continued in that capacity until the dissolution of that Parliament on 17 August 1988;

(iii) that the announcement by the Speaker of the sixth Parliament on 9 December 1986 that the plaintiff had vacated his seat was a nullity; and,

(iv) that the plaintiff is qualified to offer himself for election to Parliament in any election for any vacancy arising in Parliament.

Before I go into the issues raised in this originating summons it is necessary that I set out briefly the background facts. The plaintiff first became a member of Parliament for the Constituency of Anson on 31 October 1981 when he was elected at a by-election in that Constituency. During the general election held in December 1984, the plaintiff was re-elected the member of Parliament for the same constituency.

In December 1983 the plaintiff, together with one other person (Wong), were jointly charged and tried before the then Senior District Judge (SDJ) Khoo, for three offences under s. 421 (concealment of property) of the Penal Code. The plaintiff and Wong were each separately charged with a fourth offence under s. 199 (false declaration) of the Penal Code. The then SDJ Khoo convicted the plaintiff and Wong of a charge under s. 421, involving a cheque of S$400, but acquitted them of all the other charges. For that conviction the plaintiff and Wong were each sentenced to pay a fine of S$1,000.

Both the plaintiff and Wong appealed against the conviction to the High Court. The public prosecutor also appealed against the acquittals as well as the sentence imposed on the charge on which the plaintiff and Wong were convicted. The appeals came up for hearing before the Chief Justice who, in a judgment given in April 1985, set aside the acquittal as regards the charge under s. 199 and ordered a retrial of both persons on that charge. He allowed the appeal of the public prosecutor against the acquittals on the two charges under s. 421 and sentenced each of the accused to pay a fine of S$1,000 on each charge. On the S$400 charge under s. 421 the Chief Justice dismissed both the appeals of the plaintiff and Wong against conviction and that of the public prosecutor against sentence.

In June 1985, pursuant to s. 60(1) of the Supreme Court of Judicature Act, the plaintiff and Wong applied to the Chief Justice that certain questions of law arising from his decision on the appeals be reserved for the consideration of the Court of Criminal Appeal. The application was refused. The plaintiff and Wong appealed to the Court of Criminal Appeal against this refusal. This was dismissed. This decision of the Court of Criminal Appeal was affirmed when the plaintiff and Wong's further application to the Judicial Committee of the Privy Council (hereinafter referred to as "the Privy Council") for special leave to appeal was also turned down.

Retrial on the s. 199 charge took place before SDJ Foenander, who convicted both the plaintiff and Wong and sentenced each to a term of imprisonment of three months. They appealed to the High Court. On 10 November 1986, Lai Kew Chai J dismissed the appeals against conviction but allowed the appeals against sentence to the extent that the imprisonment term was reduced to 1 month plus a fine of S$5,000 (here I should explain that the original fine imposed was S$10,000; applying s. 216 of the Criminal Procedure Code, this was altered to S$5,000 later in the afternoon on the same day. The Judge was mistaken as to the maximum fine imposable under the law). On 11 November 1986 they applied to Lai J, under s. 60(1) of the Supreme Court of Judicature Act, for certain questions of law to be reserved for the Court of Criminal Appeal. This was refused. Both then sought to challenge the refusal of Lai J by an appeal to the Court of Criminal Appeal. They also filed two related criminal motions before the Court of Criminal Appeal. All these were rejected by the Court of the Criminal Appeal for want of jurisdiction. Their subsequent petition to the Privy Council for special leave to appeal was also rejected for want of jurisdiction.

Following that the Attorney-General reported to the Law Society of Singapore that the plaintiff was convicted of three charges under s. 421 and one charge under s. 199, which showed that the plaintiff was unfit for his profession and requested that the matter be referred to a disciplinary committee. The committee, after due deliberation, reported that cause of sufficient gravity existed for disciplinary action to be taken.

The plaintiff was consequently required to show cause before a Court of three Judges why he should not be struck off, suspended or censured. After hearing the parties, the Court on 19 October 1987 ordered that the plaintiff be struck off the roll. The plaintiff appealed to the Privy Council. Applying the test laid down in *Ratnam v. Law Society of Singapore* [1976] 1 MLJ 195, the Privy Council felt that the circumstances of the case warranted going behind the four convictions. The Privy Council held that the four convictions were wrong in law and allowed the appeal. Their Lordships accordingly restored him to the roll of advocates and solicitors of the Supreme Court of Singapore.

In the meantime on 12 November 1986, the Registrar of the Supreme Court informed the Speaker of Parliament of the outcome of the appeal on 10 November 1986 and also of the refusal of the High Court to an application of the plaintiff that a question of law be reserved for the Court of Criminal Appeal. On the same day, the clerk of Parliament wrote to the Attorney-General, who on 13 November 1986 confirmed that the plaintiff was disqualified to be and ceased to be a member of Parliament with effect from 10 November 1986.

On 27 November 1986 the plaintiff, through his own law firm, wrote a letter to the Speaker indicating his intention to attend the sitting of Parliament on 9 December 1986 and requesting the Speaker to make arrangements to enable him to do so. The speaker sought the advice of the Attorney-General who again stated that the plaintiff had become disqualified to be a member from 10 November 1986. On 9 December 1986, the speaker made a statement notifying

the House of the letter he received from M/s. J B Jeyaratnam & Co. and also of the advice he received from the Attorney-General; he also informed the House that the plaintiff had ceased to be a member of Parliament with effect from 10 November 1986. No query on this matter was subsequently raised by any member of the House or by the plaintiff.

Counsel for the plaintiff argues for this present application on two distinct grounds. First, in relation to the first three prayers, he submits that in the absence of a resolution of Parliament the plaintiff never ceased to be a member of Parliament. In this regard he relies particularly on Article 48 of the Constitution of Singapore. He contends that the statement of the Speaker of the House was insufficient to disqualify the plaintiff from the House. Further at the time when the Speaker made the statement the plaintiff had still not exhausted his legal remedy. Second, in relation to the fourth prayer, Counsel submits that in view of the decision of the Privy Council in *J.B. Jeyaretnam v. Law Society of Singapore* [1988] 3 MLJ 425 (hereinafter referred to as the "disciplinary case"), the convictions recorded against the plaintiff on the four charges are clearly bad. He contends that this High Court is bound by that decision of the Privy Council and accordingly the plaintiff is entitled to come before this Court to seek a declaration that he is not disqualified to be a member of Parliament.

First Ground

I will now proceed to consider the first ground submitted by the plaintiff. For a better appreciation of the submissions, it is necessary for me to set out the relevant provisions of the Constitution and they are the following:

> 45(1) ... a person shall not be qualified to be a member of Parliament who:
>
> (e) has been convicted of an offence by a Court of law in Singapore or Malaysia and sentenced to imprisonment for a term of not less than one year or to a fine of not less than S$2,000 and has not received a free pardon ... .
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> 46(2) The seat of a member of Parliament shall become vacant:
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> (e) if he becomes subject to any of the disqualifications specified in Article 45.
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> 48. Any question whether:
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> (a) any member of parliament has vacated his seat therein; or
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> (b) in the case of any person who has been elected as Speaker or Deputy Speaker from among persons who are not members of Parliament, any circumstances has arisen that, if he had been elected to a seat in Parliament, would cause him to vacate his seat by virtue of Article 46(2)(a) or (e),
>
> shall be determined by Parliament whose decision shall be final:
>
> Provided that this article shall not be taken to prevent the practice of Parliament postponing a decision in order to allow for the taking or determination of any proceedings that may affect the decision (including proceedings for the removal of the disqualification).

There is no doubt that on 10 November 1986 the plaintiff was convicted of an offence under s. 199 when his appeal against that conviction was affirmed by the High Court. The sentence imposed on him by SDJ Foenander was varied to that of one month's imprisonment, plus a fine of S$5,000. Under the law there was no further right of appeal from the decision of the High Court to the Court of Criminal Appeal unless, pursuant to s. 60 of the Supreme Court of Judicature Act, the High Court should decide to reserve a point of law of pubic interest for the decision of the Court of Criminal Appeal. Such an application of the plaintiff to the High Court was refused by the Judge on 11 November 1986. There the matter ended.

Notwithstanding the clear legal position, the plaintiff tried to appeal by filing on 19 November 1986 a notice of appeal against the decision of Lai J given on 11 November 1986 in refusing to reserve a point of law of public interest for the Court of Criminal Appeal. On that same day he also filed a criminal motion before the Court of Criminal Appeal (No. 61 of 1986) asking the Court of Criminal Appeal to consider certain questions of law under s. 60 of the Supreme Court of Judicature Act. On 19 December 1986 he filed another criminal motion (No. 65 of 1986) before the Court of Criminal Appeal asking for an order that the original fine of S$10,000 imposed by Lai J was null and void and the subsequent alteration on that same day to S$5,000 was also null and void. As I have indicated above, the appeal and the two criminal motions were rejected by the Court of Criminal Appeal on 28 April 1987 and eventually by the Privy Council on 29 July 1987 on the ground that there was no jurisdiction to entertain them. Both fora did not really go into the merits.

Therefore, effectively on 11 November 1986 all legal recourse available to the plaintiff had been exhausted. As from 10 November 1986 the plaintiff stood convicted of an offence and was sentenced to a term of imprisonment of one month and a fine of S$5,000. His case clearly came within the ambit of Article 45(1)(e) of the Constitution. By virtue of Article 46(2)(e), the seat of the plaintiff as a member of Parliament of the constituency of Anson "shall become vacant."

I turn next to Article 48 of the Constitution upon which considerable emphasis has been placed by Counsel for the plaintiff. That article provides that "any question whether any member of Parliament has vacated his seat therein ... shall be determined by Parliament whose decision shall be final." I would make three observations on this provision. Firstly, this article in no way restricts or modifies the scope of Articles 45(1) and 46(2). Secondly, it is really a provision empowering Parliament to decide any such question if it should arise and such decision of Parliament shall be final; it does not say that a member shall only vacate his seat on a decision of the House. Thirdly, the article talks about whether any member of Parliament "has vacated" his seat and not, for example, "is to vacate" his seat.

Mr. Thomas relies on two Malaysian cases in support of his contention that unless there is a resolution of the House, a member though falling within the ambit of Article 45(1)(e) may continue to be a member: *Fan Yew Teng v. Setia Usaha, Dewan Ra'ayat & Ors.* [1975] 2 MLJ 40 and *Michael Ben Anak Panggi v. PP* [1979] 2 MLJ 65, both decisions of the Malaysian High Court.

In *Fan Yew Teng*, the plaintiff, who was a member of the Malaysian Parliament was convicted on 13 January 1975 in the High Court for an offence under the Sedition Act and was sentenced to a fine of RM$2,000 or six months' imprisonment. On the same day he appealed against the said decision. The appeal was pending in the Federal Court when by a letter dated 4 February 1975 the 1st defendant informed the plaintiff that on his conviction and sentence he had become disqualified under Article 48(1)(e) of the Federal Constitution and by virtue of Article 50(1) his seat had become vacant. On 17 February 1975 the Election Commission by writ of election directed that there be a by-election. The requisite notice was published in 20 February 1975 issue of Utusan Malaysia newspaper. Following that, the plaintiff instituted an originating summons questioning the assertion that his seat had become vacant. Mohamed Azmi J said (at p. 42):

> ... it is my conclusion that the mere fact that a member of parliament has been convicted and sentenced to a fine of not less than $2,000 and has not received a free pardon does not render his seat vacant automatically in all cases under Article 50(1). In my view where a member has appealed against his conviction and sentence, the matter becomes *sub judice* and accordingly a question or dispute has arisen as to his disqualifications, and as such it is wrong

> to consider Articles 48(1)(e) and 50(1) only without regard to the provision of Article 53. It is my finding that where a question or dispute has arisen whether a member of Parliament has become disqualified, the seat of that particular member shall only become vacant when he becomes disqualified and the power to decide whether he has become disqualified or not clearly rests with the Dewan to which he belongs by virtue of Article 53.
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> (Emphasis added. The Malaysian Articles 48(1)(e), 50(1) and 53 are the equivalent of our Articles 45(1)(e), 46(2) and 48, with some slight differences in wording.)

As compared with our present case, there are at least two distinguishing features in *Fan Yew Teng*. First, the plaintiff there had appealed to the Federal Court exercising his undoubted right to appeal; legal proceedings were still pending. Second, on being informed by the Setia Usaha of the Malaysian Parliament that he had been disqualified from being a member of Parliament and that his seat had become vacant and on the issue of the requisite notice for a by-election, he questioned that assertion and immediately commenced the action in Court. In those circumstances I could see the relevance of the Malaysian Article 53 and the need for a decision of the House. Mohamed Azmi J even said that "the power given to the House of Parliament under Article 53 is so clear and overriding that it can be exercised even where a member of the House has not fully exhausted his legal rights.

In our present case, the decision of the High Court was in exercise of its appellate criminal jurisdiction. There was no further right of appeal to the Court of Criminal Appeal. The plaintiff, having been informed by the Speaker of Parliament that in law he had ceased to be a member of Parliament, accepted it without any further query. He did not challenge what was communicated to him. Therefore, there was no question before Parliament which Parliament needed to take a decision. The position in our present case is entirely different from that in *Fan Yew Teng*. I would observe that Mohamed Azmi J did not say that in every case before a member of Parliament is disqualified and his seat becomes vacant there must be a resolution of the House. In fact he impliedly recognised there could be automatic vacation of a seat when he stated that the fact that a member had been convicted and fined for not less than $2,000 "does not render his seat vacant automatically in all cases under Article 50(1)." Then one may ask what would be the instances where automatic disqualification and vacation of seat would occur. I could think of two situations straight away - when the member has exhausted all his rights of appeal or if he decides not to appeal. On the facts of the case in *Fan Yew Teng*, I would humbly agree with the decision therein.

Turning to *Michael Ben Anak Panggi*, that was a case where the applicant, a member of the Sarawak State Legislative Assembly (Dewan) on an appeal to the High Court had his sentence for an offence under s. 379 of the Malaysian Penal Code varied from one of ten months' imprisonment to a fine of $2,000. Subsequently, by way of a motion he sought to have the High Court refer two questions of law to the Federal Court under s. 66(1) of the Malaysian Courts of Judicature Act 1964. That application was refused. It was also argued that the direct result of the sentence would be to disqualify the applicant from continuing to be a member of the Dewan and the sentence accordingly contravened Article 19 of the Sarawak Constitution (which provides that if any question arises whether a member has ceased to be qualified, the decision of the Council shall be taken and shall be final). Yusoff J having quoted with approval a part of the passage of Mohamed Azmi J in *Fan Yew Teng*, which I have set out above, went on to hold that (at p. 67):

> the applicant was not automatically disqualified and did not cease to be a member of the Dewan upon his conviction of an offence and sentence to $2,000 fine. A question in the Council has to be raised on such disqualification before the Dewan could take a decision to disqualify him and determine his tenure of seat.

Yusoff J appears to hold that in every case of a member of the Dewan having been convicted and sentenced to a fine of not less than $2,000 he does not cease to be a member until a question is raised and decided in the council. The judgment itself does not set out fully all the relevant provisions of the Sarawak Constitution. Perhaps those provisions warrant such a finding. I would, however, make these observations. First, *Fan Yew Teng's* case was certainly not on all fours with *Michael Ben Anak Panggi's* case - in *Fan Yew Teng* an appeal as of right was still pending whereas in *Michael Ben Anak Panggi* there could be no further appeal. The criminal process in *Michael Ben Anak Panggi* had ended. This distinction does not appear to have been noted. Second, Yusoff J seems to place no significance on the following words of Mohamed Azmi J which he had cited with approval: "... does not render his seat vacant automatically in all cases under Article 50(1)." Third, if the relevant Sarawak provisions are in fact indistinguishable from the Singapore provisions, then I would, with respect, say that the views expressed by Yusoff J might be just a little too wide. Obviously if a member of the Dewan though convicted and sentenced to a fine of S$2,000 persists in asserting that he is not disqualified, then the Dewan must decide the question. That appears to be the position in *Michael Ben Anak Panggi*. If he should let the matter be and no longer asserts he is still a member, I do not see why the Dewan should have to decide anything.

In my judgment, Articles 45, 46 and 48 of our Constitution should be given their plain meaning and applied in a sensible and practical manner. It is one thing to say that a question whether a member of Parliament has vacated his seat shall be determined by Parliament; it is another to say that no member shall cease to be a member and his seat vacated until Parliament has so decided. To illustrate my point, take for example Article 46(2)(c); it says that the seat of a member shall become vacant "if, by writing under his hand addressed to the Speaker, he resigns his seat in Parliament." Of course the Speaker will inform the House of the resignation. Is there a need for Parliament to take a formal decision on the letter of resignation? Can it be said that until parliament takes a decision on it, the person does not cease to be a member? Is there a question before the House? I can see none. The construction contended for by the plaintiff runs counter to the plain words of Articles 46(2)(c) and 48.

As I see it, the purpose of Article 48 is twofold. First, it recognises that the circumstances under Article 46(2) where the seat of a member could become vacant are numerous and some of those could be controversial; thus the need for Parliament to decide such a question should it arise. Second, that such a question, if it arises, shall be decided by Parliament and its decision shall be final. When such a question does arise Parliament must decide and not the Court.

Now after a lapse of almost three years from the date of the decision of the High Court and long after the sixth Parliament had been dissolved (on 17 August 1988), the plaintiff by this originating summons filed on 6 October 1989 raises the question that he was still a member until 17 August 1988. It is clearly too late for him to do so after the 6th Parliament had ceased to exist. It is not for this Court to decide such an issue.

I accept the submission of the Attorney-General that the Speaker made no decision when he informed the House on 9 December 1986 that the plaintiff had ceased to be a member from 10 November 1986. A plain reading of the Hansard will bear that out. In the circumstances of this case as I have outlined, his seat had become vacant by operation of law.

I may add that a system of automatic disqualification is not something exceptional. Under the English Forfeiture Act 1870 a person convicted of felony and sentenced to a term exceeding 12 months' imprisonment was automatically disqualified from sitting or voting in Parliament. This was amended by the English Criminal Law Act 1967 which abolished

automatic disqualification and disqualification from sitting in Parliament during sentence became entirely a matter for the House of Commons to decide. However, the Representation of the People Act 1981 restores the automatic disqualification from membership of the House of Commons of those convicted persons who are sentenced or ordered to be imprisoned or detained indefinitely or for more than one year so long as they are detained or are unlawfully at large. The seat of a member who is so disqualified shall be vacated. Such a person may not be nominated for election and if nominated, that nomination shall be void.

Mr. Thomas also drew my attention to the case involving one Peter Arthur David Baker, where the English House of Commons took a formal decision to expel him from the House. The report in the Hansard does not indicate whether the case came within the Forfeiture Act 1870, i.e., offence was a felony and the sentence was more than twelve months' imprisonment. The letter written by Baker clearly asked the Speaker and the House to dispossess him of his seat without delay. I can find nothing in that case which is of assistance in the interpretation of Articles 45, 46 and 48 of our Constitution.

For the reasons aforesaid, I reject the first ground put forward on behalf of the plaintiff.

Second Ground

I now turn to the second ground advanced by Counsel for the plaintiff. What he says may be simply put as follows: the Privy Council has in the disciplinary case ruled that the convictions recorded against the plaintiff on the four charges were bad in law. The Privy Council formed part of the judicial system of Singapore and therefore its judgment on an appeal from Singapore was and is binding on all Courts in Singapore. What the plaintiff now seeks under prayer (iv) is a declaration from this Court that notwithstanding the conviction under s. 199 and sentence imposed, the plaintiff is entitled to come to Court to ask for a declaration that he is not disqualified to offer himself for election to Parliament should an election occur. Counsel concedes that he is not asking that the conviction be erased or be set aside as that cannot be done. He argues that it could not have been the intention of Article 45(1)(e) to apply to a case where the conviction is bad. In support of his contention that the plaintiff is entitled to a declaration of his rights he relies on *Munnich v. Godstone Rural District Council* [1966] 1 All ER 930.

In *Munnich*, the plaintiff and another whose name was Taras bought a one and a half acre field on which was a rough sort of bungalow. In early 1960, they allowed four caravans on the field. In March 1960, the Godstone Rural District Council (Godstone RDC) served four enforcement notices on the owners and a notice each on the occupier of each caravan requiring them to remove the caravans concerned from the field. The notices were disregarded. More caravans came on to the field. On 29 August 1960 the Caravan Sites and Control of Development Act 1960 came into operation and within two months the owners applied for a site licence but it was refused. On 16 April 1962 the plaintiff pleaded guilty to permitting the land to be used as a caravan site in contravention of the enforcement notice and was fined. In June 1962 the plaintiff issued a writ against Godstone RDC claiming a declaration that he had "deemed permission" for the site and that he was entitled to a site licence. In November 1962 the plaintiff was charged again with continuing to permit the land to be used as a caravan site in contravention of the notice. The plaintiff's Counsel argued strenuously that the enforcement notice was bad. The justices nonetheless convicted and fined him. In July 1964, the plaintiff was charged again for the same offence. He pleaded not guilty but was convicted and fined. No appeal against those convictions was taken up by the plaintiff. Then the civil action commenced by the plaintiff came on for hearing. Mocatta J held that the enforcement notice was bad; that in consequence the plaintiff had a "deemed permission" to use the

land as a caravan site and he was entitled to a site licence. He made a declaration to that effect. Godstone RDC appealed to the Court of Appeal and contended that in view of the convictions the Court ought not to entertain this claim for a declaration. Denning MR said (at p. 933):

> ... The Courts have in recent years been ready to use the machinery of declaration far more than they used to do and it has proved most useful ... It must not be carried too far. If this were a case where a defendant was seeking to reverse a finding against him on the facts, we should not entertain it for a moment ... When property rights, however, come into question, it may be different. A criminal Court is not the best of tribunals to deal with vexed questions of rights to property ... and I would not myself be prepared to throw out this case simply on the ground that the matter had already been adjudged in the Magistrates' Court.

Salmon LJ asked (at p. 936):

> Suppose that it is shown that a man under a mistake as to the law pleads guilty to an offence of this kind which he has not in fact committed, does that take away his ordinary common law right of coming to the High Court and asking for a declaration as to his property rights?

and he answered:

> I cannot for myself accept that in a case which turns entirely on a point of law, the fact that a man had made a mistake as to the law before the Magistrate takes away his right of coming to the High Court or makes it improper for him to do so.

It was obvious that a factor that weighed very much in the consideration of the Court of Appeal, whether to exercise its discretion, was the fact that the conviction was before a Magistrates' Court of lay justices. Denning MR felt that such a Court could not be expected to competently deal with property rights questions. This reasoning can have no application to our present case. It would also be noted that Denning MR recognised that there was a limit to the use of the machinery of declaration. I ought to add that on the merits of the claim the Court of Appeal disagreed with Mocatta J that the enforcement notice was bad and refused a declaration.

Reference was also made by Counsel for the plaintiff to *Arnold & Ors. v. National Westminster Bank* [1988] 3 All ER 877. There the question under consideration was issue estoppel. The facts are succinctly set out in the headnote to the report and they are as follows:

> In 1983 on the first rent review date of a lease a dispute arose between the landlords and the tenants over whether the 'fair market rent' defined in the lease meant the rent under a hypothetical lease containing the same provision for five-yearly rent reviews as the actual lease or the rent under a hypothetical lease containing no provision for reviews. The Judge held that the hypothetical lease was to be treated as containing no provision for rent reviews. Shortly before the second review date the lessees instituted proceedings seeking rectification of the lease and a determination of the true construction of the rent review clause on the ground that subsequent cases had shown the Judge's decision on the first rent review to be wrong. The landlords applied to strike out the claim on the ground that there was an issue estoppel between the parties which prevented the tenants from relitigating the matter.

Browne-Wilkinson VC held that a subsequent change in the law which indicated that an earlier decision on a point sought to be reopened in a second action was wrong was capable of bringing the case within the exception to the doctrine of issue estoppel where the injustice of now allowing the matter to be relitigated outweighed the hardship to the successful party in the first action in having to relitigate the point. In my view *Arnold's* case is entirely different and is of no assistance to me.

The Attorney-General argues that what the plaintiff here seeks to do is to negate the effect of the criminal convictions through proceedings for a declaratory order in a Civil Court. He seeks to have his convictions re-determined. The Attorney-General pointed out that even the Privy Council recognised that it could not disturb the convictions. Accordingly, he submits that this proceeding amounts to an abuse of the process of the Court. In support, he cited *Eshah Bte Sa'at v. Meriam Bte Sa'at & Ors.* [1975] 2 MLJ 97 and *Imperial Tobacco Co. Ltd. & Anor. v. Attorney-General* [1980] 1 All ER 866. I do not think I need to go too much into these two cases as the principles they lay down are fairly well established. *Eshah Bte Sa'at* decided that a Civil Court should not be a declaratory order rule that a determination of the Collector of Land Revenue in a distribution suit is wrong; the proper proceedings should be by *certiorari*. In *Imperial Tobacco* the House of Lords held that where criminal proceedings were properly instituted against a person, it was not a proper exercise of judicial discretion for a Judge in a Civil Court to grant that person a declaration that the facts alleged by the prosecution did not in law prove the offence charged, because to make such a declaration would usurp the function of the Criminal Court. All the more so, Mr Tan argues, that where by the criminal process a person has been duly convicted and sentenced by a lower Court for an offence and that conviction is upheld on appeal by the High Court exercising appellate criminal jurisdiction, it would be improper for a Civil Court to grant a declaratory order that the conviction is bad and cannot stand.

Having considered the arguments of both Mr Thomas and the Attorney-General it is my opinion that it would be wrong to grant the declaration asked for by the plaintiff. This would be stretching the machinery of declaration too far. Before me, neither Mr. Thomas nor the Attorney-General sought to go into the merits or demerits of the conviction under s. 199. I would not have been inclined to hear them on that if either of them had wanted to do so as I do not think it proper for me to review the decision of another Court of equal competence which was exercising its appellate criminal jurisdiction. Mr. Thomas says that under the doctrine of precedent the views on the four convictions expressed by the Privy Council in the disciplinary case bind me. Obviously those views must carry very great weight. For the present purposes I do not think I need decide whether they are strictly binding on me. I would only observe that those views of the Privy Council were not expressed in an appeal against the four convictions where the public prosecutor was a party. They were expressed in an appeal on a disciplinary matter where the convictions on the four charges formed the substance of the complaint against the plaintiff. On a strict application of the doctrine of *stare decisis* I would be inclined to think that those views *obiter dicta* rather than *ratio decidendi*. Be that as it may, the correct procedure to adopt to overcome the convictions (assuming they are bad), has been clearly indicated by the Privy Council itself in the disciplinary case (at p. 434):

> ... Their only prospect of redress, their Lordships understand, will be by way of petition for pardon to the President of the Republic of Singapore.

Even Mr. Thomas recognises the difficulties of the point he is making. As I have mentioned above, he has to concede that he is not asking that the conviction be set aside as that cannot be done. That was also what the Privy Council had in fact said. The practical effect of the declaratory order which he now asks me to make is to do that very thing which cannot be done, i.e., to remove or set aside the conviction on the s. 199 charge so that the plaintiff will no longer be disqualified to be a member of Parliament. It is without question that a Civil Court cannot set aside a criminal conviction. This Court will not usurp a jurisdiction which it does not possess. The course which the plaintiff urges upon me to take clearly deviates from the established procedure under our criminal justice system, which is, if at the

end of the day it is shown that a person's conviction is wrong (for whatever reasons) and there is no further process for appeal, the only recourse available to that person is to petition the President for a pardon. Indeed this procedure is implicitly recognised in Article 45(1)(e) itself it also refers to a free pardon. To go by way of a civil action for such a declaratory order is not a process I would sanction.

If I were to grant prayer (iv), that would not only cause confusion but I would be declaring something which is contrary to Articles 45(1)(e) and 46(2)(e). Clearly, whether a conviction is subsequently considered good or bad, it remains a conviction unless it is removed by a free pardon from the President. Only such a pardon can remove the disqualification. It is significant that the Privy Council did not say that because the conviction was bad, therefore, Article 45(1)(e) did not apply and the plaintiff was not disqualified from being a member of Parliament. Instead, it accepted that a petition for a pardon was the only available redress.

Finally, as I understand it, the plaintiff has petitioned the President for a pardon. That has been refused. I hope the plaintiff is not thinking that by this originating summons he could indirectly get this Court to override the President's refusal to exercise the prerogative of mercy even though no question regarding the exercise of the prerogative is raised in this application. I would only add this. I have serious doubts, as is the position in England, that the manner of the exercise of this prerogative is a matter that can be questioned in Court: see *Hanratty v. Lord Butler of Saffron Weldon* [1971] 115 Sol Jo 386.

In the result, and having given this matter the most careful consideration, the application in this originating summons has to be dismissed with costs.

Also found at [1990] 2 CLJ 477